

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

)
IN RE: DePUY ORTHOPAEDICS, INC.)
ASR HIP IMPLANT PRODUCTS) MDL NO. 1:10 md 2197
LIABILITY LITIGATION)
)
) SHORT FORM COMPLAINT
)
) FOR
)
) DePUY ORTHOPAEDICS, INC.
)
) ASR HIP IMPLANT PRODUCTS
)
) LIABILITY LITIGATION

This applies to:

Shirley A. Walker v. DePuy Orthopaedics, Inc., *et al* JURY TRIAL DEMANDED

SHIRLEY A. WALKER

Plaintiff,

-against-

DePUY ORTHOPAEDICS, INC., DePUY
INC., DePUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON, JOHNSON &
JOHNSON SERVICES, INC., JOHNSON &
JOHNSON INTERNATIONAL,

Defendants

**ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS,
INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

1. Plaintiff, Shirley A. Walker, states and brings this civil action before the court for the United States District Court for the Northern District of Ohio as a related action in the matter entitled IN RE: DePUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS

LIABILITY LITIGATION MDL No. 2197. Plaintiff is filing the short form complaint as permitted by Case Management Order Number 4 of this Court.

ALLEGATIONS AS TO VENUE

2. Venue of this case is appropriate in the District Court for the Eastern District of Virginia. Plaintiff states that but for the order permitting direct filing into the Northern District of Ohio pursuant to Case Management Order Number 4, Plaintiff would have filed in the District Court for the Eastern District of Virginia. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings, that this case be transferred to the above referenced District Court.

3. Plaintiff Shirley A. Walker is a resident and citizen of Santa Fe, New Mexico, however, she resided in Virginia with her daughter when she received the implantation complained of herein, and claims damages as set forth below.

4. Plaintiff was born on April 5, 1946.

5. Plaintiff is not filing this case in a representative capacity.

Plaintiff claims damages as a result of:

X injury to herself

injury to the person represented

wrongful death

survivorship action

X economic loss

loss of services

loss of consortium

ALLEGATIONS AS TO INJURIES

6. Plaintiff was implanted with a DePuy ASR hip implant on her right hip on or about October 26, 2009 at the Reston Hospital Center in Reston, Virginia, by Dr. Mark P. Madden.

7. Plaintiff did not receive bilateral hip replacement.

8. On or about November 1, 2019, Plaintiff suffered the following personal and economic injuries as a result of the implantation with the ASR hip implant: Plaintiff suffered a revision surgery of her hip because the ASR rotated out of position; Plaintiff suffered a large liquid pseudotumor approximately 15 centimeters in the subcutaneous tissue in the area of the fascia and gluteus medius consistent with metal-on-metal disease; the pseudotumor was excised and resulted in approximately 20 cm of dehiscence of the fascia; approximately two thirds of the abductors were detached with pseudotumor fluid down to the joint; Plaintiff suffered metallic debris in the posterior wall and metallic debris at the trunnion; Plaintiff suffered protusio acetabuli; Plaintiff suffered metal-on-metal metallosis; after the revision surgery Plaintiff has suffered dropfoot, weakness, pain, discomfort, scarring, and other pain, emotional and physical suffering.

9. Plaintiff had the ASR hip implant explanted on or about November 1, 2019, at the Reston Hospital Center in Reston, Virginia by Dr. Mark C. Hartley and Thomas J. Klein.

10. Plaintiff had only one hip implant.

11. Plaintiff has suffered injuries as a result of the implantation and explantation of the DePuy ASR hip implant manufactured by Defendants as shall be fully set forth in Plaintiff's Fact Sheet and other responsive documents provided to the Defendants and are incorporated by reference herein.

12. At the time of implantation with the ASR hip implant, the Plaintiff resided with her daughter in Virginia.

13. The Defendants by their actions or inactions, proximately caused Plaintiff's injuries.

14. The Plaintiff could not have known that the injuries she suffered were as a result of a defect in the ASR hip implant until after the date the device was recalled from the market and the Plaintiff came to learn of the recall.

15. The Plaintiff could not have known that she was injured by excessive levels of chromium and cobalt until after the date she had her blood drawn and she was advised of the results of said blood work.

16. As a result of the injuries Plaintiff sustained, she is entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

**ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

17. The following claims and allegations are asserted by Plaintiff and are herein incorporated by reference:

FIRST CAUSE OF ACTION
(NEGLIGENCE);

SECOND CAUSE OF ACTION
(NEGLIGENCE PER SE);

THIRD CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN);

FOURTH CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-MANUFACTURING DEFECT);

FIFTH CAUSE OF ACTION

(STRICT PRODUCTS LIABILITY-FAILURE TO WARN);

SIXTH CAUSE OF ACTION
(BREACH OF EXPRESS WARRANTY);

SEVENTH CAUSE OF ACTION
(BREACH OF WARRANTY AS TO MERCHANTABILITY);

EIGHTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTIES);

NINTH CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION);

TENTH CAUSE OF ACTION
(FRAUDULENT CONCEALMENT);

ELEVENTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION);

TWELFTH CAUSE OF ACTION
(FRAUD AND DECEIT);

THIRTEENTH CAUSE OF ACTION
(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW);

FOURTEENTH CAUSE OF ACTION
(MISREPRESENTATION BY OMISSION);

FIFTEENTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD);

SIXTEENTH CAUSE OF ACTION
(NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS);

SEVENTEENTH CAUSE OF ACTION
(INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS);

EIGHTEENTH CAUSE OF ACTION
(GROSS NEGLIGENCE/MALICE);

NINETEENTH CAUSE OF ACTION
(LOSS OF CONSORTIUM);

TWENTIETH CAUSE OF ACTION
(PUNITIVE DAMAGES);

X TWENTY-FIRST CAUSE OF ACTION
(MEDICAL MONITORING);

_____ TWENTY-SECOND CAUSE OF ACTION
(VIOLATION OF APPLICABLE STATE CONSUMER FRAUD STATUTE)
SPECIFY THE STATUTE ALLEGED _____

_____ TWENTY-THIRD CAUSE OF ACTION
(RESTITUTION OF ALL PURCHASE COSTS AND DISGORGEMENT OF
ALL PROFITS FROM MONIES THAT PLAINTIFF INCURRED IN
PURCHASE OF THE HIP IMPLANT);

PLAINTIFF ASSERTS THE FOLLOWING ADDITIONAL STATE CAUSES
OF ACTION:

WHEREFORE, Plaintiff prays for judgment against Defendants as follow:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorney's fees and costs;
6. For prejudgment interests and the costs of suit; and
7. For such other and additional relief as this court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated April 13, 2021.

Respectfully submitted,

Shirley Walker,

By: _____/s/
Co-Counsel

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